

§ 229.912

17 CFR Ch. II (4-1-02 Edition)

Instructions to Item 911: (1) The reports, opinions and appraisals required to be identified in response to paragraph (a) of this Item (§ 229.911) include any reports, opinions and appraisals which materially relate to the roll-up transaction whether or not relied upon, such as reports or opinions regarding alternatives to the roll-up transaction whether or not the alternatives were rejected.

(2) The information called for by paragraph (a)(2) of this Item (§ 229.911) should be given with respect to the firm which provides the report, opinion or appraisal rather than the employees of such firm who prepared it.

(3) With respect to appraisals, a summary prepared by the appraisers should not be included in lieu of the description of the appraisals required by paragraph (c) of this Item (§ 229.911). A clear and concise summary description of the appraisals is required.

[56 FR 57247, Nov. 8, 1991, as amended at 59 FR 63683, Dec. 8, 1994]

§ 229.912 (Item 912) Source and amount of funds and transactional expenses.

(a) State the source and total amount of funds or other consideration to be used in the roll-up transaction.

(b)(1) Furnish a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the roll-up transaction including, but not limited to, filing fees, legal, financial advisory, accounting and appraisal fees, solicitation expenses and printing costs. Identify the persons responsible for paying any or all of such expenses.

(2) State whether or not any partnership subject to the roll-up transaction will be, directly or indirectly, responsible for any or all of the expenses of the transaction. If any partnership will be so responsible, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(c) If all or any part of the consideration to be used by the sponsor or successor in the roll-up transaction is expected to be, directly or indirectly, provided by any partnership, state the amount to be provided by each partnership and the sources of capital to finance such amount.

(d) If all or any part of the funds or other consideration is, or is expected to be, directly or indirectly borrowed by

the sponsor or successor for the purpose of the roll-up transaction:

(1) Provide a summary of each such loan agreement containing the identity of the parties, the term, the collateral, the stated and effective interest rates, and other material terms or conditions; and

(2) Briefly describe any plans or arrangements to finance or repay such borrowing, or, if no plans or arrangements have been made, make a statement to that effect.

(e) If the source of all or any part of the funds to be used in the roll-up transaction is a loan made in the ordinary course of business by a bank as defined by section 3(a)(6) of the Exchange Act and section 13(d) or 14(d) is applicable to such transaction, the name of such bank shall not be made available to the public if the person filing the statement so requests in writing and files such request, naming such bank, with the Secretary of the Commission.

§ 229.913 (Item 913) Other provisions of the transaction.

(a) State whether or not appraisal rights are provided under applicable state law, under the partnership's governing instruments or will be voluntarily accorded by the successor, the general partner or the sponsor (or any of their affiliates) in connection with the roll-up transaction. If so, summarize such appraisal rights. If appraisal rights will not be available to investors who object to the transaction, briefly outline the rights which may be available to such investors under such law.

(b) If any provision has been made to allow investors to obtain access to the books and records of the partnership or to obtain counsel or appraisal services at the expense of the successor, the general partner, the partnership, the sponsor (or any of their affiliates), describe such provision.

(c) Discuss the investors' rights under federal and state law to obtain a partnership's list of investors.

§ 229.914 (Item 914) Pro forma financial statements: selected financial data.

(a) In addition to the information required by Item 301 of Regulation S-K,